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1 filing. And among the nonmalignant claims, I calculated an  
2 annualized rate of 54,361 claims filed against Turner & Newall  
3 in 2001 and in only two years, 2006 and 2007, do the  
4 nonmalignant claims exceed that. So this is not an aggressive  
5 forecast.

6 Q. Having forecast the number of claims, how did you go  
7 about forecasting the value or the obligation to pay those  
8 claims that Turner & Newall would have?

9 A. Well, we used the same values that I used to estimate the  
10 pending claim. I've estimated that the values that I forecast  
11 that Turner & Newall would have paid in 2002, I forecast no  
12 further increase in the values, the settlement values for  
13 Turner & Newall after 2002 beyond the increase that I  
14 presented earlier and used for the pending claims. I do  
15 forecast that those payments will increase with monetary  
16 inflation, which I've estimated at two and-a-half percent, but  
17 the real value of those claims would be the same in 2010/2030  
18 as they are in 2002. I've also -- and Slide 41 just notes this  
19 assumption at two and-a-half percent interest rate.

20 I also assumed that future settlements would occur  
21 two years after -- the case would be settled two years after  
22 filing. And so when I discount -- so I essentially apply  
23 inflation to two years past the year it's filed and I assumed  
24 that's when the claim would be paid. I then present value  
25 those claims back to the year 2001 using a 5.02 percent

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1 discount rate, which is a risk free rate of return that was  
2 provided to me by Tersigni and Associates, which is the  
3 financial advisors to the Asbestos Claimants Committee.

4 Q. Where did you get the 2.5 percent increase for inflation?

5 A. It really has two sources. One, it's a number that's been  
6 used by the Congressional Budget Office, although their most  
7 recent forecast is about 2.1 or 2.2, but I've also looked at  
8 what's been the recent inflation over the last ten, 15 years  
9 and 2.5 is a better approximation of that.

10 Q. If we turn back to Slide 24, you said you used the same  
11 settlement and resolution values for the future claims as for  
12 the present pending claims subject to inflation and  
13 discounting. Are these the values at Slide 24 that you used?

14 A. Yes, they are.

15 Q. Using those slides, those values and your projections of  
16 future claims that would be filed and the assumption you made  
17 about timing, did you then forecast the indemnity for future  
18 claims that would arise after October 1st for Turner & Newall?

19 A. Well, we forecast that indemnity year by year, and for  
20 the claims rising in each year and then summed it across all  
21 those years. When we simply summed it across the years with  
22 this two and-a-half percent inflation rate, the totals for  
23 each disease summed across all years, these are the nominal  
24 values, are shown on Slide 42. So that the future payment for  
25 mesothelioma claims for the increasing model would be

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1 \$9 billion, for nonmalignant claims it would also be  
2 \$9 billion, a total of just under 19 -- just under 20 billion  
3 dollars. For no increasing value, the total is \$13.6 billion.  
4 That's the nominal, that's what I would expect they would pay,  
5 actually have to pay in each year, have they the assets to pay  
6 the claims.

7 Q. Now to get their total indemnity in nominal dollars at  
8 all you have to then add the future indemnity to the present  
9 indemnity?

10 A. Yes. This Slide 42 is only for the indemnity for future  
11 claims, that's correct, so I need to add pending to get the  
12 total, and that's shown on Slide 43.

13 Q. And that shows the nominal values for both the increase  
14 and the not increasing projections that you have made?

15 A. Right.

16 Q. Did you then calculate the present value of the future  
17 indemnity?

18 A. Actually, we calculated the present value for both the  
19 future and the pending claims, because again we assumed that  
20 the pending claims would be paid on average two years in the  
21 future, so there was a slight discount of those, and that's  
22 shown on Slide 44, where the present value of the future  
23 claims is \$1.35 billion, the nominal value is 1.455, as shown  
24 on page 14. So there is a slight reduction in the values of  
25 pending claims for present valuation but it makes a large

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1 affect upon future claims because.

2 THE COURT: You said page 14?

3 THE WITNESS: I'm sorry, page 44, I beg your pardon.

4 BY THE WITNESS:

5 A. And so here you'll notice, the Court will notice that the  
6 present values of the pending claims are, of course, the same  
7 for both models, the difference only is with regard to futures  
8 with the total present value of liability for Turner & Newall,  
9 assuming the increasing model is 11, a little over  
10 \$11 billion, the total present value for the no increasing  
11 model is a little over 8.2 billion.

12 Q. Did you prepare a graphic to show how the claims for  
13 these various diseases are distributed?

14 A. Yes. I prepared two of them, one for each model. Slide 45  
15 shows -- it's essentially it's a pie chart that shows among  
16 all of the liability across the various diseases what portion  
17 will be for mesothelioma and each of the other diseases, and,  
18 as we see, that there is a pretty similar amount of liability  
19 for mesothelioma and nonmalignant claims. With cancers, more  
20 than half of the liability would be owed to cancer victims not  
21 to nonmalignant victims.

22 And that pattern is also similar on Slide 46, which  
23 is a similar chart done for the no increase model where,  
24 again, the mesothelioma/nonmalignant claimants would receive  
25 about the same fraction of payments and the cancers together

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1 would represent about 55 percent of the total claimants.

2 Q. On summary then Slide 44 presents your estimation, either

3 under your increasing model or under your nonincreasing model,

4 of what you believe the pending and future liabilities for

5 U.S. claims for personal injury and death as a result of

6 asbestos exposure against T&N would be?

7 A. That's correct.

8 Q. Dr. Peterson, you testified in an estimation hearing in

9 Owens Corning, did you not?

10 A. Yes, I did.

11 Q. And that estimation hearing was before Judge Fullam in

12 Philadelphia, was it not?

13 A. Yes.

14 Q. And Judge Fullam, after hearing all of the evidence,

15 rendered an opinion, did he not?

16 A. Yes.

17 Q. Have you read that?

18 A. Yes.

19 Q. Do you recall that in that opinion he criticized your use

20 of an increasing propensity to sue?

21 A. Yes, he did not accept that.

22 Q. And do you recall what his reasons were for rejecting

23 that?

24 A. He explained that he did that based upon.

25 MR. STROCHAK: Objection, your Honor, Dr. Peterson is

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1 going to explain to us Judge Fullum's reasoning? I mean, his  
2 reasoning --

3 MR. INSELBUCH: Or I'll read it.

4 MR. STROCHAK: -- in his opinion? I think the opinion  
5 would be the appropriate place to go.

6 MR. INSELBUCH: I think that's perfectly fair.

7 Let me read to the Court from Judge Fullum's opinion. This is  
8 at page ten of his memorandum and order dated March 31st,  
9 2005.

10 MR. STROCHAK: Your Honor, it strikes me this would  
11 be more appropriate for closing arguments, obviously at the  
12 Court's discretion, but it sounds like argument to me.

13 MR. INSELBUCH: This is not argument, your Honor, I'm  
14 going to ask Dr. Peterson to comment on Judge Fullum's  
15 conclusions as to whether they have relevance in this  
16 proceeding based on the facts here.

17 THE COURT: I think that's an appropriate question.

18 MR. STROCHAK: Thank you, your Honor.

19 THE COURT: To the extent that it clarifies his  
20 testimony here today in contrast to what would appear to be a  
21 criticism by a judge in another opinion, I think it's  
22 appropriate for him to respond.

23 MR. INSELBUCH: Thank you.

24 BY MR. INSELBUCH:

25 Q. This is at page ten of Judge Fullum's memorandum and

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1 order dated March 31, 2005. Referring to Dr. Peterson. His  
2 prediction that the number of claims will continue to increase  
3 sharply for the next five years is based primarily upon the  
4 upsurge in filings as a result of the NSP, an upsurge which  
5 everyone else agrees was a temporary aberration, and in my  
6 opinion, Dr. Peterson has failed adequately to take into  
7 account the changes in the asbestos litigation landscape which  
8 have already occurred and which will likely continue.

9 Now, first on the subject of the increasing  
10 propensity to sue. First, do you agree with Judge Fullum's  
11 conclusion?

12 A. With all due respect, I don't. There are other reasons  
13 why the claims increased against National Gypsum in recent  
14 years.

15 Q. You said National Gypsum.

16 A. Excuse me, Owens Corning. And I don't believe that the  
17 data that were presented to him were sufficient to examine  
18 that issue and were distorted, but he did not have the  
19 opportunity to know that because other witnesses that  
20 presented this issue testified after me and I didn't have a  
21 chance to respond to errors in their presentation, but I  
22 disagree with his conclusion.

23 Q. But apart from whether you agree with him or disagree  
24 with him, his reason is stated that your conclusion or  
25 estimate or preference for an increase was based primarily

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1 upon the upsurge in filings as a result of the NSP, an upsurge  
2 which everyone else agrees was a temporary aberration. Does  
3 that set of fact, irrespective of whether Judge Fullam was  
4 right or you're right, does that set of facts exist in this  
5 case?

6 A. No.

7 Q. And why is that?

8 A. I need to describe a bit what the NSP was and, indeed,  
9 Mr. Hanly described the Owens Corning -- described both --  
10 mentioned both the NSP and described it, and also described  
11 Owens Corning's prior litigation strategy. The NSP is a  
12 program that was similar to, to some degree, to the SSP  
13 program that the Center for Claims Resolution had adopted  
14 after the Georgine class action was overturned. There were  
15 attempts to have large scale settlements with law firms for a  
16 predetermined negotiated amounts for each claim based on  
17 criteria that both sides agreed. That's similar.

18 What's different about it is that prior to this point  
19 in time, to the NSP, Owens Corning had been an aggressive  
20 litigator, had been the most aggressive litigator and  
21 defendant. And it tried, and again Mr. Hanly discussed this  
22 in his testimony, but it's widely known. And looking at their  
23 data it also shows they received many adverse verdicts in 1995  
24 and 1996. It turned out to be a costly process that was  
25 counter-effective for them.

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1           But what the argument was that the NSP had an impact  
2 is that other experts asserted that when the NSP program was  
3 adopted that claimants who had not filed previously against  
4 NSP now came in and filed in the late nineteen nineties to  
5 take advantage of the NSP programs, and they referred to some  
6 data they got from the Manville Trust that they argued  
7 supported it. I take an issue with regard to what their data  
8 is and how they used it, but I needn't get into that here.

9           But assuming that these data were correct and that  
10 there is evidence that people who had not filed an early years  
11 now filed in the late nineties to participate in the program  
12 and that that produced the increases in claims for Owens  
13 Corning, if that happened, it would have happened because in  
14 the mid nineteen nineties claimants were facing an Owens  
15 Corning that was a very aggressive litigator, and there were  
16 claimants who did not want -- who had marginal claims and did  
17 not want to face a litigation environment and policy where  
18 Owens Corning essentially wouldn't pay claims unless they  
19 litigated them, whereas, under the NSP it became a friendly  
20 environment. And that's the argument, the NSP became a  
21 friendlier environment and made it easier for claimants.

22           So this argument about NSP essentially grows out of a  
23 change in the strategy and tactics that Owens Corning used, a  
24 tactic that discourage claim filings in earlier years and the  
25 people who proposed this argument state encouraged claim

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1 filings in late years. So that produced distortions in timing  
2 and claims that otherwise would have been filed in earlier  
3 years were filed later and produced an artificial trend.

4 I don't believe that's true. That's not consistent  
5 with the claims patterns against other defendants who didn't  
6 have an NSP, which were similar to what Owens Corning was  
7 experiencing. And companies that didn't have that NSP  
8 environment, that change of strategies, also saw these kind of  
9 increases. And a the data, frankly if they had presented the  
10 complete data, wouldn't have supported their argument. But,  
11 that's the arguments and that's what Judge Fullam was  
12 referring to.

13 Here, Turner & Newall and CCR never had an aggressive  
14 litigation strategy, they always had, as Mr. Hanly testified,  
15 a policy of trying to settle claims. And indeed, they settled  
16 many claims prior to the settlement, Georgine settlement class  
17 action being filed in 1993. During that period of time, there  
18 were relatively few claims but we know when they were filed  
19 against other defendants, so there wasn't this change in  
20 regimen and strategy that would cause claimants to first  
21 withhold claims from earlier years and file them later.  
22 Because the policy also and strategies at CCR were continuous  
23 and constant, so you don't have a tactical change that could  
24 have led to some of the increases in the Owens Corning case.  
25 And that's, that's essentially what the NSP argument was and

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1 it just simply doesn't apply here.

2 Q. In Owens Corning, in that hearing, did you also, as you  
3 are here, present a nonincreasing model?

4 A. Yes, I did.

5 Q. And how did that model and its estimate compare with the  
6 estimates that Judge Fullam credited?

7 A. Judge Fullam credited the essentially two alternative  
8 forecasts, one by Dr. Rabinovitz and one by Dr. Vaquez and  
9 they found -- one was higher, one was lower than the  
10 \$7 billion that he ultimately estimated would be Owens  
11 Corning's liability. Dr. Rabinovitz's forecast was  
12 \$8.1 billion and she assumed no increase in propensity to sue.  
13 My no increase model is 8.4 billion dollars. So essentially  
14 my forecast was effectively almost identical to that one, and  
15 I presented that to the Court, I just -- and frankly, I would  
16 have been perfectly comfortable with the Court accepting that  
17 forecast, although I don't think it was as good, either there  
18 or here, as the increasing model, but -- he did not accept my  
19 increasing propensity to sue model, but he didn't reject my  
20 alternative no increasing model, which is indeed consistent  
21 with both of those he accepted.

22 Q. He went on to say, as read before, in my opinion Dr.  
23 Peterson has failed adequately to take into account the  
24 changes in the asbestos litigation landscape which have  
25 already occurred and which will likely continue. And earlier

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1 in his opinion beginning at page six, he lists a number of  
2 factors occurring in the tort system which he questions  
3 whether they would continue in the future. And I would like to  
4 name these factors for you and ask you whether or not, in  
5 fact, in this case you considered these events or these  
6 factors and whether they apply to Federal-Mogul and how you  
7 employed these issues in doing your estimation.

8 There were seven factors that he listed. The first  
9 was so-called venue shopping. Are you familiar with the term?

10 A. Yes.

11 Q. Did you consider the concept of venue shopping in  
12 Federal-Mogul and as it might or might not have affected the  
13 values of claims against Turner & Newall and whether, if there  
14 were to be a decline in the ability to do venue shopping,  
15 whether that would have made any difference in your forecast?

16 A. I did consider it. I don't -- it was not an issue that  
17 was a significant for Turner & Newall as it might have been  
18 for Owens Corning, and with the exception of one jurisdiction  
19 it probably wasn't terribly important to Owens Corning.

20 Judge Fullam specifically identified three  
21 jurisdictions, the State of Mississippi, the State of Texas,  
22 and Southern Illinois being places where there had been --  
23 there have been changes in the ability of plaintiffs who are  
24 not residents or didn't work in those jurisdictions to file.  
25 There have been changes in the venue rules of those three.

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1                   The change in Texas occurred five or six years ago,  
2 it was about 1996 I believe, and so whatever impact that had  
3 has already been reflected in the data for Owens Corning,  
4 frankly, and also for Turner & Newall. But I've looked at  
5 that issue and the primary effect of the Texas venue statute  
6 was to make it more difficult for claimants who did not --  
7 probably impossible for claimants who did not either reside in  
8 Texas or were not exposed in Texas to file lawsuits there. And  
9 so it did move some claims.

10                  Well, in talking with plaintiffs and defendants, what  
11 we've seen is that claims that were otherwise filed in Texas  
12 tend to be filed now in other states. It was -- the venue was  
13 in part used to deal with problems of statutes of limitations  
14 among Alabama and Georgia claims. So the claims, it didn't  
15 eliminate claims, it moved them.

16                  The second impact that it had --

17                  MR. STROCHAK: Your Honor, excuse me. I hate to  
18 interrupt. But again, this analysis is not contained in Dr.  
19 Peterson's reports. It strikes me that it's really more  
20 appropriate for redirect examination, if I choose to cross-  
21 examine him about it. There is no analysis in his reports of  
22 venue issues or anything else.

23                  MR. INSELUCH: Your Honor, an expert provides a  
24 report stating his opinions and the reasons for those  
25 opinions. In his testimony, he can answer questions. He

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1 certainly couldn't put in his report everything he thought  
2 about in connection with formulating his opinion. It seems to  
3 me fair to let the expert respond to questions that fairly  
4 would support or would argue against the adequacy of his  
5 opinion and the adequacy of his thinking process.

6 THE COURT: Why don't we handle it this way. Let's  
7 permit the questioning to take place, as long as it's  
8 appropriate, and I think it is. If someone states a  
9 proposition that in direct that proposition be questioned,  
10 even by direct examination, to see if it continues to support  
11 the conclusion, which is important in the report, if the  
12 conclusion isn't changed or affected, the justification for  
13 the conclusion can be explored during the direct examination.

14 Now, whether or not it's anticipating a rebuttal, I  
15 take the position in a non-jury case that rather than trying  
16 to fragment whether that's direct, that's rebuttal, it will  
17 come out on cross, if it's appropriate to be explored, let's  
18 explore it at one time so that when we finish with the witness  
19 and he leaves here, we don't have to worry about coming back  
20 for a degree of rebuttal that can be anticipated, if in fact  
21 it's now already a matter of record what that challenge is.  
22 We'll let counsel explore it while he's on the stand.

23 So, we'll continue with the examination. And to the  
24 extent that the questions are directed to help support a  
25 conclusion that's already contained in reports that you have,

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1 I'll permit that series of questions.

2 MR. STROCHAK: Thank you, your Honor.

3 THE COURT: It's different if he's shifting  
4 conclusions which you are not prepared to meet, but the  
5 conclusion isn't changing, it's just additional support for  
6 it. See the difference?

7 MR. STROCHAK: I understand, your Honor. I  
8 respectfully disagree, but....

9 THE COURT: Well, it's non-jury and I think we should  
10 have as complete a record as we can.

11 MR. STROCHAK: I understand. My point is to the  
12 extend he's testifying about an analysis he did on the affect  
13 of a venue rules, it's very difficult for me to cross-examine  
14 it having just hearing this announced for the first time, that  
15 was my objection, your Honor.

16 THE COURT: Well the other way of handling it is to  
17 say if it's not brought out this way, would you never have had  
18 an intention to explore his conclusion by asking him about  
19 those elements that were raised in Judge Fullum's report?  
20 But, would you have directed to any of those conclusions in an  
21 effort to weaken the opinion here? If you don't feel that  
22 they're relevant here, then you don't have to explore them,  
23 but if it's a potential you are going to raise them, then we  
24 might as well meet them.

25 MR. STROCHAK: Thank you, your Honor.

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1 MR. INSELBUCH: Judge Fullum's decision was  
2 March 31st, the property damage lawyers had an opportunity to  
3 take Dr. Peterson's testimony thereafter. And they may or may  
4 not have chosen not to ask these questions at deposition.  
5 They may ask them here.

6 THE COURT: All right.

7 BY MR. INSELBUCH:

8 Q. Had you finished your discussion of venue shopping?

9 A. No, unfortunately I had a couple more comments on it.

10 With regard to Texas, there was one other effect and  
11 it was a perverse effect of the statute. Dr. Rabinovitz, who I  
12 mentioned, in the Owens Corning case has done studies of what  
13 the effects of statutes generally in this area and finds that  
14 often they have effects that are unanticipated and contrary to  
15 the persons who sponsor it. And this is one case of that  
16 because the Texas lawyers who were no longer representing --  
17 I've learned this by again talking to plaintiffs' lawyers and  
18 defense lawyers -- the Texas lawyers who now had fewer cases  
19 from out-of-state come in to represent, began to go to other  
20 parts of Texas where they had not very aggressively sought to  
21 represent claims. So they ended up bringing more claims into  
22 the litigation and getting higher values because these were  
23 now Texas victims in Texas. So the net effect of the Texas  
24 statute with regard to venue is, one, it probably didn't have  
25 much impact because cases that were in Texas got transferred

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1 elsewhere. They may have gotten slightly lower values in other  
2 states, it's hard to tell. The other impact is that it  
3 increased the pressures within Texas by having more Texas  
4 claimants in venues and jurisdictions that were more  
5 threatened, and so probably it was either a wash or actually  
6 increased the liability.

7 I did consider this issue. The Texas venue statute  
8 is something I've known about, thought about, considered in  
9 all of my forecasts since we've had a chance to look at it's  
10 affect.

11 The other two jurisdictions were Mississippi.  
12 Mr. Hanly testified -- and Mississippi was not a significant  
13 jurisdiction for Turner & Newall, as Mr. Hanly testified,  
14 frequently Turner & Newall was able to get summary judgment to  
15 dismiss Mississippi cases, he testified to that effect,  
16 because the plaintiffs there weren't able to identify Turner &  
17 Newall. Even when they settled claims in Mississippi, they  
18 didn't do so for very large values. As I testified previously,  
19 of the 14,000 nonmalignant claims that Turner & Newall settled  
20 in 2001, 12,000 of them were from Mississippi for an average  
21 value of \$300. If some of those cases had venues -- were in  
22 Mississippi because of venue provisions that are no longer  
23 applicable, it didn't have much impact. And indeed, those  
24 cases could have been filed in their home jurisdiction and it  
25 very well would likely have gotten more than the \$300 average

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1 they got in Mississippi, so Mississippi wasn't significant.

2 The other jurisdiction is Southern Illinois, it was a  
3 euphemism for Madison County, a particular county in Illinois  
4 that's infamous in asbestos litigation because of the large  
5 size of the verdicts there. It's a significant jurisdiction  
6 and venue issues there are significant as long as a defendant  
7 is very actively participating in litigation.

8 But that wasn't Turner & Newall. Turner & Newall to  
9 my knowledge hadn't tried a case in Madison County, it was not  
10 a litigating defendant. Even in the future I think it will  
11 not be a particular litigating defendant. In my estimates of  
12 the future liabilities against Turner & Newall, I did not make  
13 any assumption that those payments would go up because they  
14 were now going to be exposed to judgments in Madison County  
15 that they hadn't been before. So, the summary of that is that  
16 I did consider venue issues, I considered the specific issues  
17 and jurisdictions that Judge Fullam mentioned and they might  
18 -- they would have marginal effects at most.

19 Q. The second factor that Judge Fullam listed again at page  
20 six was mass screenings. Did you consider the fact of mass  
21 screenings and apparently the thought that mass screenings  
22 would be reduced in connection with your forecast for  
23 Federal-Mogul's liabilities?

24 A. I did. I have -- it's an issue that I think there is some  
25 uncertainty about, what would be the entrepreneurial activity

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1 of plaintiffs' lawyers using those methods. I've talked to  
2 some plaintiffs' lawyers who think there may a reduction in  
3 that, some who think that this will continue. Judge Fullam  
4 stated that he -- although he was critical of mass screenings,  
5 I think his point here was that he thought they would become  
6 economically unattractive to plaintiffs' lawyers to conduct in  
7 the future because the assets available to pay claims were  
8 declining.

9 I think that's probably not the case because with the  
10 confirmation of all the pending bankruptcies setting up trust  
11 distribution procedures, as well as the continuing litigation,  
12 there still would be substantial amounts of money paid in  
13 aggregate across all defendants to even unimpaired  
14 nonmalignant claimants. It's probably less than it would be  
15 before, so it may reduce the incentives some and so there  
16 probably will be some law firms that no longer find it cost  
17 effective to do the activities necessary to review claims. On  
18 the other hand, there are other law firms, there are always  
19 bottom-feeding law firms, if they can assemble ten thousand  
20 claims and receive \$50,000 on average across all those claims,  
21 or even \$20,000 a claim on the average, which is something  
22 that could be obtained with these trusts, that's a significant  
23 amount of money, income to the law firm. So, it may be that on  
24 a going-forward basis we will see some reduction in this kind  
25 of entrepreneurial activity, but I would -- that's speculative

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1 I think and uncertain and I've considered it in its -- you  
2 know, it's one argument for concluding that perhaps the --  
3 well, in fact, I've taken it into account because my forecasts  
4 of the number of future nonmalignant claims under my  
5 increasing model are essentially less than what they received  
6 in the past, so I think it's probably reflected in the  
7 calculations that I do, but it's an argument that I think has  
8 some weight.

9 Q. The third topic or factor that Judge Fullam listed was  
10 erroneous x-ray interpretations by suspect B readers. What, if  
11 any, consideration did you give to that and the potential for  
12 the distinction of so-called erroneous x-ray interpretations  
13 or the continuing of those readings?

14 A. A couple. I mean, I looked at that issue extensively in  
15 Owens Corning but did not have the opportunity to testify  
16 about it. I really have three things to say about that. Four  
17 things to say about that.

18 One is despite raising this concern, Judge Fullam  
19 went on to say that B readers have an opportunity to get to a  
20 jury, so even though he may have been offended by them he  
21 recognized that these -- this may not have had a terribly  
22 great effect because those B readers can still get before  
23 juries and testify.

24 The other response is that the -- I looked at the  
25 particular doctors who -- about when concerns were raised in

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1 regard to B readers, I looked at that in Owens Corning, I've  
2 looked at it in Manville, I looked at it in the Center for  
3 Claims Resolution, and the doctors that are concerned tended  
4 to have filed claims in the mid nineteen nineties and they've  
5 been filing relatively fewer claims, some not at all now  
6 recently. So, there is a reduction, those particular  
7 individuals are less a feature of the litigation in recent  
8 years. They've already been weeded out, they've already been  
9 weeded out to some degree, and that's reflected in the recent  
10 data of claims filings against Turner & Newall.

11 The other comment is that the as Mr. Hanly said, the  
12 defendants know who those doctors are, and they know, if there  
13 is a doctor upon whom they don't place much credence, they  
14 will pay less money to a claim that has this documented by a B  
15 read from one of these doctors. So, the system itself reflects  
16 the knowledge of plaintiffs' and defense lawyers. There are  
17 no secrets in asbestos litigation, it's so big and people are  
18 so experienced in it that the defendants know this and take  
19 this into account. That's one of the reasons why these  
20 doctors are used less frequently now because a plaintiff's  
21 lawyer getting a new case in is not going to send someone for  
22 a B read to one of these suspect doctors because he won't get  
23 as much money as if he gets a B read in a doctor who has more  
24 credibility and will provide the opportunity of getting a  
25 larger settlement.

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1           The last point is that it follows up on what is  
2 related to what Judge Fullam said, it's that with regard to  
3 trial presentation, which is what would be considered here,  
4 plaintiffs' lawyers can always use a different B reader at  
5 trial. They submit a file, they submit a claim to Owens  
6 Corning, if they go to trial, and often some of them already  
7 have had the x-rays read by different B readers in order to  
8 have a stronger case, either at trial or because the Manville  
9 Trust for example won't accept x-rays from Dr. Herron, one of  
10 the doctors listed, and I think there is one or two others.  
11 I'm a trustee of the Fuller Austin Trust. At my urging, the  
12 Fuller Austin Trust also refuses to accept medical reports  
13 from Dr. Herron. And CCR itself wouldn't accept in some of  
14 its SSP agreements would not accept medical records supplied  
15 by Dr. Herron. So a lot of that is being weeded out. And if  
16 it's a decent claim, the plaintiffs' lawyers can go to another  
17 doctor.

18           So for all those reasons, I think it's a problem,  
19 it's a problem that bothers me as a trustee, it's a problem  
20 that bothers me as an expert in this litigation. I agree with  
21 Judge Fullam that the litigation system isn't perfect, that  
22 there are things that he doesn't like about it, things that I  
23 don't like about it, but I'm forecasting how the system  
24 operates, not how I think it should operate.

25 Q. The next factor listed by Judge Fullam was overpayment to

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1 "unimpaired" claimants.

2 A. I think that's related to this B read issue. As long as  
3 you can get to a jury with cases that may be questionable,  
4 they present a litigation threat, so, you know, I don't --  
5 overpayment is a difficult concept for me. There is a market  
6 for these claims and the defendants are sophisticated with  
7 regard to the strength of evidence that is submitted and they  
8 pay less to weaker claims, so I think that's reflected in  
9 there. I don't think that's an issue that can be addressed in  
10 a forecast, either here or there, and I think in the end his  
11 supplemental opinion tended to suggest that, his opinion for  
12 reconsideration.

13 Q. The next factor he listed were group lawsuits. What, if  
14 any, role did group lawsuits play in your forecasting of  
15 Turner & Newall's U. S. liabilities?

16 A. Well, group lawsuits themselves don't have much  
17 significance, it's really their relationship to global  
18 settlements, which is another problem, and maybe I can address  
19 them both and save some time.

20 The argument is that plaintiffs' law firms file on  
21 one complaint a wide range of claims, mesothelioma claims and  
22 unimpaired nonmalignant claims, and that then the defendant is  
23 forced to settle or enters into settlements in which it  
24 settles both nonmalignant and mesothelioma claims. The filing  
25 of the complaint itself doesn't mean they'll be tried together

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1 or they have to be settled together, it's a convenience and  
2 efficiency with regard to being able to file. It reduces the  
3 operating cost of law firms a bit, that's about it's only  
4 impact, but it's the grouping of claims for resolution at  
5 trial that have an impact.

6 There, the lawyers representing Owens Corning as well  
7 as Mr. Hanly in this case, thought that in both instances that  
8 the group settlements, putting cases together, was  
9 advantageous for defendants. Mr. Hanly testified to that here,  
10 the lawyers who represent Owens Corning testified to that  
11 there. It's advantageous to them because by putting a bunch of  
12 cases together, they can settle the mesothelioma claims more  
13 cheaply and they can settle the bulk of these claims, a group  
14 of these claims more cheaply than if they had settled them  
15 individually. They may pay somewhat more in settlements to the  
16 nonmalignant claims, the unimpaired claims, but they get a  
17 savings off of what the lung cancer or mesothelioma claims do.

18 I actually discussed this issue in one of my Rand, in  
19 my Rand reports, and I called it the concept of borrowing  
20 value, that weaker claims tend to borrow settlement dollars  
21 from the stronger claims. And that's one of the consequences.  
22 It may be offensive from my standpoint as to the equities of  
23 it, who should get the most money, but from a standpoint of a  
24 defendant, it is actually advantageous, as the lawyers say.

25 One other comment about that is that the State of New

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1 York was -- or the City of New York, the judge that has the  
2 asbestos litigation in the City of New York was concerned  
3 about this and so she prevented the grouping of nonmalignant  
4 claims and meso claims being filed together. And as a result  
5 of it, the trial schedule in New York now is nothing but  
6 mesothelioma claims. And as the lawyers who represented Owens  
7 Corning said, that's the worst thing that could have happened  
8 because they're getting trial after trial after trial of the  
9 worst cases. They would much rather have trials and  
10 settlements of a group of claims rather than just facing the  
11 worst cases for them. So, again, there is a perverse effect of  
12 some of these.

13 And so I think that the -- the final comment I'd say  
14 is that Mr. Hanly testified that in the future Turner & Newall  
15 would have continued to make group settlements, and I  
16 testified to that in my deposition in this case, because it's  
17 the only way to resolve these claims. You've got to resolve  
18 groups of claims, there are too many to do otherwise. And as  
19 Mr. Hanly says, it was advantageous to Turner & Newall to  
20 continue to settle them in that manner, it reduced it's  
21 overall liability. So, that happened in the past I think it  
22 would happen in the future. I don't think it's a reason to  
23 expect any change in the liability either in Owens Corning or  
24 here.

25 Q. The final factor that Judge Fullam listed was punitive

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1 damages. Do you have a view, did you consider punitive damages  
2 in your estimation of Turner & Newall's U. S. asbestos  
3 liabilities and how, if at all, did you apply that factor in  
4 your work?

5 A. Well, punitive damages really weren't an issue for Turner  
6 & Newall because it wasn't a litigating defendant. The only --  
7 the Hanly firm and several members of his law firm with whom  
8 I've discussed it could identify only one punitive damage  
9 award entered against Turner & Newall despite it's -- I mean,  
10 that shows how valuable the CCR was in protecting it, its had  
11 a terrible corporate history and it only had one punitive  
12 damage award, and that award was entered or verdict was  
13 entered in March, Mr. Hanly testified, of 2001 and was  
14 appealed. The judgment was bonded and was subsequently settled  
15 in 2004, I believe he testified, after the database, but I --  
16 I haven't used and all parties in this case hadn't used this  
17 after that database was generated. It was a Missouri case.  
18 I've gone back and looked at all of the 2001 settlements and  
19 payment and found none that are \$7 million or \$6 million, so  
20 it's not in the database, so it didn't get counted or  
21 calculated. I didn't include it, so there is no -- I can't --  
22 you know, I would have excluded it if it had been there  
23 because I understand it is in bankruptcy, it's not likely to  
24 be regarded as the same as a compensatory verdict. But it  
25 happened so late, it wouldn't have impacted subsequent

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1 settlements. As Mr. Hanly said, it just didn't have an impact  
2 on any settlements that occurred before.

3 But interestingly in the end in this, there was a  
4 motion for reconsideration filed by the banks in Owens Corning  
5 and there was a second opinion which Judge Fullam issued and  
6 he specifically stated in there that he accepted as plausible  
7 the statements by -- plausible -- accepted the statements  
8 by -- truth of the statements by the lawyers representing  
9 Owens Corning that they did not consider and use the threat of  
10 punitive damages in settling cases, and Mr. Hanly said the  
11 same thing here.

12 I think, as an expert in this area, I've done  
13 studies, I've done empirical studies of punitive damages and I  
14 know that they are rare, they're unpredictable, so that they  
15 have relatively little impact beyond the cases in which they  
16 arise. Where I think they do have an impact is if you are  
17 taking a case to trial and the judge allows punitive damages  
18 to get to a jury, then if I were a defendant, I think  
19 reasonable defendants then consider that threat in a matter of  
20 trying to settle that case during trial. But just because you  
21 are taking a case to trial even in a jurisdiction that allows  
22 punitive damages doesn't mean that you are going to be  
23 subjected to punitive damages because in my experience many  
24 trial judges just refuse to let the issue get to a jury. So I  
25 think it's an unpredictable matter that has effect for a small

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1 number of claims which aren't really relevant here because  
2 this is not a litigating defendant and has, according to the  
3 people that reached the settlements, both plaintiffs and  
4 defense lawyers, had no impact on the settlement. So, I  
5 considered it. In the end, I think that I don't disagree with  
6 Judge Fullum's opinion, and it's certainly not a relevant  
7 consideration here.

8 MR. INSELBUCH: Your Honor, that is the end of Dr.  
9 Peterson's estimate of U. S. liabilities, we're about to turn  
10 to his estimate of U. K. liabilities, and if your Honor --

11 THE COURT: Perfect.

12 MR. INSELBUCH: -- thinks this is a good time for a  
13 recess --

14 THE COURT: Recess.

15 (Short recess).

16 DEPUTY CLERK: All rise.

17 THE COURT: You may be seated.

18 MR. INSELBUCH: May I proceed?

19 THE COURT: Yes, you may.

20 BY MR. INSELBUCH:

21 Q. Dr. Peterson, I would like to now call your attention to  
22 your estimation of Turner & Newall United Kingdom liabilities  
23 and ask you to describe to the Court, first, basically what  
24 methodology you employed, and then to tell the Court  
25 specifically how you went about doing that estimation and what

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1 the estimation resulted in.

2 MR. INSELBUCH: And I think we begin at Slide 47,  
3 your Honor.

4 THE WITNESS: Well, the approach was the same as in  
5 the United States. There were a couple of changes that had to  
6 be made to reflect the different litigation circumstance in  
7 the UK and also differences in the epidemiology between the  
8 United States and the UK, but, otherwise, it was a similar  
9 approach in which I took data from the database provided us by  
10 Turner & Newall for UK claims, did similar analyses and  
11 compared them with an epidemiological forecast of future  
12 asbestos-related deaths and proceeded essentially similarly  
13 with a couple of changes.

14 Q. Did you make an effort to familiarize yourself with the  
15 English litigation system and environment in which Turner &  
16 Newall operated?

17 A. Yes.

18 Q. How did you do that?

19 A. Well, I spoke with lawyers in the UK. I made two trips  
20 to the UK both to learn about it and to talk about this. I  
21 had some familiarity with it because I've, there's another  
22 project that I was doing with regard to Turner & Newall. My  
23 company did a study of Turner & Newall's liabilities in yet  
24 other countries, what Turner & Newall calls the rest of the  
25 world, ROW. And one of the consultants we retained to do that

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1 is a woman who is in the UK and is an expert, she's not an  
2 attorney but she is an expert on asbestos litigation there  
3 with victims' groups and so on, and also knows people who are  
4 in the law and social sciences area in Europe. Also, another  
5 person that collaborated on that study is a good friend of  
6 mine who is actually on my doctoral committee, is a lawyer who  
7 is well-known, used to be the head of the American Bar  
8 Foundation and is a well-known international scholar of law  
9 and society issues, he had actually written a long monograph  
10 on asbestos litigation in the UK. So I looked at, used all  
11 those sources. And then I spoke with people at Turner &  
12 Newall about the litigation. Also, the Tweedale book  
13 described the UK litigation to some degree, it was another  
14 useful tool in learning about it, about litigation in the UK.  
15 Those are my primary sources.

16 Q. You say you used the same basic methodology. You looked  
17 at the database first?

18 A. Well, I looked at the database after having familiarized  
19 myself with regard to the issues and then kind of together  
20 tried to learn more about the database by talking with people.  
21 But that's -- the quantitative analysis begins with the  
22 database, yes.

23 Q. And would you describe to the Court what Slide 47  
24 reflects?

25 A. This is a slide that's similar to one I presented for the

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1 U.S. analysis, it just compares the number of claims that had  
2 been filed and resolved and the number of claims that were  
3 pending by asbestos-related diseases.

4 I need to make a couple of comments about differences  
5 here. I did my analysis, I made two different -- two  
6 complimentary predictions in the UK. I separated claims by  
7 what I called shared liability and Turner & Newall liability.  
8 One of the differences between the United States and the UK  
9 asbestos litigation is that Turner & Newall is by far the  
10 dominant manufacturer of asbestos products and dominant  
11 asbestos defendant in the UK. It's kind of like Manville plus  
12 Owens Corning plus Turner & Newall in this country, it plays a  
13 role that's not, there's no equivalent in the United States.

14 So there are lots of claims -- and also the liabilities  
15 in the UK tend to arise from among employees. They don't have  
16 a worker's compensation system like we have here. So in this  
17 country if a claim -- a Turner & Newall employee was exposed  
18 by asbestos, to asbestos by Turner & Newall, he or she would  
19 look to worker's compensation for compensation from Turner &  
20 Newall. In the UK that's a litigation claim so -- and Ms.  
21 Crichton talked about that earlier that most of the claims are  
22 employee claims. So that meant for both of those reasons  
23 there were a relatively large number of claims in which Turner  
24 & Newall was the only defendant on the database.

25 The UK database for Turner & Newall reflected that it

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1 often had 90 percent or more of the liability, that's a field  
2 that was always entered in these claims as to what share  
3 Turner & Newall will have. And those claims are different  
4 than the claims that had less than 90 percent. Most of the  
5 claims were less than 90 percent liability congregated around  
6 30 or 40 percent. And the shared liability claims were more  
7 often contributions claims, indemnity claims by insurance  
8 companies, they involve smaller payments, were by people who  
9 may have worked as an employee not for Turner & Newall but at  
10 another company, they may have been environmental claimants  
11 who had lawsuits, so they're a different ilk. So for that and  
12 some other reasons I did the analysis separately for the  
13 Turner & Newall only claims, which is those with 90 percent or  
14 more liability and historically got paid more money from  
15 Turner & Newall as opposed to the rest of them. And this  
16 shows the counts claims in each of those categories by  
17 disease.

18 One other thing I should mention, is that other  
19 cancers, as Ms. Crichton side, were almost always lung cancer,  
20 they didn't separate, they called it other cancer, other than  
21 meso, but they didn't separate meso from yet other cancers. I  
22 mean, excuse me, they didn't separate lung cancers from  
23 gastrointestinal cancers, those are mostly lung cancer.

24 Q. What is then reflected on Slide 47?

25 A. It's the count of the number of resolved claims and the

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1 number of pending claims for each of these diseases. Another  
2 noteworthy matter is that mesothelioma claims represent a  
3 substantially greater share of the overall number of claims  
4 filed in the UK and in the United States, although the UK does  
5 get asbestosis and pleural claims just like in the UK.

6 Q. Having --

7 A. Let me add one other thing. The unspecified disease  
8 claims is a less significant issue in the UK, there are very  
9 few of them. As a result, we did a different process.  
10 Whereas in the U.S. we had the several step process of  
11 assigning unspecified disease claims -- first, looking to  
12 Manville to fill it in and then assigning the remainder  
13 imputing it and leaving some still in the unspecified claim.  
14 Here we just imputed diseases for all of the unspecified  
15 claims and we didn't have the transition matrix in the UK like  
16 we had here. We used the matrix that had been derived by the  
17 Center for Claims Resolution for some of its claims which put,  
18 for example, 1.4 percent of the unspecified disease claims in  
19 the meso category. It's a standard method for doing  
20 imputation of unspecified diseases and it was a simpler  
21 process than we did here.

22 Q. And what does Slide 48 show?

23 A. This is the distribution of diseases. Once we have  
24 imputed diseases for the unknown claims. I stand corrected on  
25 my own slide. We continued to -- I'm sorry. 48 is simply the

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1 percentages from the prior table and it shows that the  
2 mesothelioma claims are between 20 and 30 percent of all  
3 claims in the UK compared to maybe 2 to 3 percent in the  
4 United States, and the relatively small number of unspecified  
5 resolved claims.

6 Q. As with the U.S. claims, did you then try to determine  
7 what the average resolution values were of these cases?

8 A. Yes, we calculated average settlements, on Slide 49,  
9 where the average settlements are averaged across claimants  
10 who received payment. The percentage payment reflects among  
11 all resolved claims what percentage received something. And  
12 when you multiply the two together, you get the average  
13 resolution costs. And here it shows that there is a  
14 substantial difference in the amount Turner & Newall paid  
15 between the shared liability and T&N only liability, which is  
16 one of the reasons we separated them.

17 Q. Are these --

18 A. Let me make one other comment. The period across which I  
19 calculated these averages in the UK 1998 to 2000, it's a  
20 longer period than I used in the United States, which was 2000  
21 and 2001. The reason I did that is, one, there's much less  
22 data, so we tend to want more than less data. The other  
23 reason why it in contrast to the United States, which had this  
24 rather substantial increasing trends in the average payments  
25 between '98 and 2001, the payments were relatively flat across

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1 time, quite stable in the UK. So averaging them together over  
2 that period of time just didn't distort the averages and  
3 allowed me to have more data. If I'd used the longer period  
4 in the United States, I would have come up with an estimate of  
5 the current average of Turner & Newall was far less than they  
6 were actually paying in 2000 or even 2001. I would be  
7 averaging old settlement values of a now remote period in  
8 time. So that's an inappropriate step to do for the United  
9 States, here it didn't make any difference because the  
10 settlements were pretty stable.

11 Q. And are these amounts stated in pound Sterling?

12 A. Yes, they are.

13 Q. Is that because that's how the records were kept?

14 A. Yes. And that's what they're interested in.

15 Q. Did you then project a forecast for the indemnity for  
16 pending claims?

17 A. Yes, I did, using the same approach that I did in the  
18 U.S., that's Slide 50, again, separately for the shared  
19 liability claims and the Turner & Newall only claims. It  
20 shows the number of claims in each disease category after I  
21 allocated or imputed the unspecified diseases. The averages  
22 in pound Sterlings I've already presented. And the total  
23 indemnity amount that we calculate by doing the  
24 multiplication.

25 Q. And these are, again, stated in the year 2000 pound

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1 Sterling?

2 A. 2001.

3 Q. I'm sorry. The year 2001 pound Sterling?

4 A. That's correct.

5 Q. Did you then proceed to project the future claims that  
6 would arise in the United Kingdom against Turner & Newall?

7 A. Yes.

8 Q. How did you do that?

9 A. We followed the same general method as shown on slide 51,  
10 I looked at the number of claims filed by disease in each  
11 year.

12 Q. And this was, again, done in the two different  
13 categories?

14 A. Yeah, separately for the shared liability and Turner &  
15 Newall liability. And again, there is -- there is an increase  
16 you'll see in the cancer filings in recent years against  
17 Turner & Newall but that has a different source than the  
18 United States. And I need to describe the different  
19 epidemiology and exposures in the two countries.

20 The exposures that occurred in the UK and Europe for  
21 asbestos tended to occur later. In the United States, there  
22 was heavy exposure during the 1940's during World War II when  
23 people were working shipyards here, not an issue in the UK for  
24 obvious reasons. And, in general, asbestos products, their  
25 use, their consumption in the UK lagged the United States by

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1 about ten years or so. So I did not -- and there is no  
2 epidemiological model in the United Kingdom that is similar to  
3 the Nicholson model in the United States.

4 So I addressed this by using -- there was a recent  
5 model done in December of last year or 2003, I believe, by a  
6 health agency in the UK that forecast future instances of  
7 mesothelioma but only mesothelioma, there are none for lung  
8 cancer or other cancers, and it uses a less sophisticated  
9 method, less data intensive methods. All they did, they  
10 looked at what their equivalent of the SEER count was,  
11 observed a pattern of the curve in it and just extend whether  
12 that curve out. And that's somewhat of a problematic methods  
13 to use, because if you remember back to the Nicholson, the  
14 comparison of the SEER data to Nicholson, I pointed out in the  
15 late '80's there was a decline in the number of mesothelioma,  
16 SEER incidents of mesothelioma. If you forecasted a curve  
17 based on that, you're going to get a much different curve than  
18 actually eventually resulted, whereas Nicholson was a  
19 theoretical base and rich empirical base was a much better  
20 source of prediction than just extending a line.

21 So I used Nicholson instead of the mesothelioma model  
22 from the UK, although when I compared them, and I lagged  
23 Nicholson, so when Nicholson said there was going to be X  
24 number of deaths in 2005, I treated that as the same number of  
25 deaths in 2015, I just slid it ten years into the future.

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1 When I did that, it was very similar to the UK forecast. So  
2 based on that confirmation and the superiority of the  
3 Nicholson method, even though it was for U.S. exposures, not  
4 UK, I used the Nicholson epidemiology. And that method was  
5 also accepted by the experts who were working for the UK  
6 parties of interest, they accepted that as an appropriate  
7 approach and used that in their own work.

8 But what that means is now you -- it's as if the United  
9 States is ten years ago with regard to the incidents of  
10 asbestos diseases. That was a period of substantial growth,  
11 still annual increases in the incidents of mesothelioma  
12 disease and even lung cancer, which has peaked between those  
13 two points in time. So what we see here, this growth  
14 increasing numbers of claims against Turner & Newall in the U.  
15 K. result from the fact that the incidence was growing, not  
16 because the propensities to sue were growing. So when I  
17 forecast in the U. K., I used Nicholson lagged by ten years, I  
18 observed the propensities to sue were quite stable and I used  
19 those -- I assumed that there would be no increase in the  
20 propensities to sue in the United Kingdom both because the  
21 data were consistent with no increase and also, because of my  
22 discussions with people in the U. K., there did not seem to be  
23 an expectation or bases for seeing the kind of continuing  
24 growth and claims in the U. K. that we've observed here.

25 Q. Would you turn in your book to Plaintiff's Exhibit 6, the

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1 exhibit book.

2 A. That's in Volume III?

3 MR. FINCH: Yes, it is.

4 THE WITNESS: Yes, I have this.

5 BY MR. INSELBUCH:

6 Q. Is that the report from the British government, the  
7 health and safety executive that you made reference to in your  
8 testimony?

9 A. Yes, it is.

10 MR. INSELBUCH: We offer that, your Honor.

11 MR. STROCHAK: No objection, your Honor.

12 THE COURT: P-6 is in evidence.

13 (PLAINTIFF EXHIBIT P-6 WAS RECEIVED IN EVIDENCE.)

14 BY MR. INSELBUCH:

15 Q. With all of that by way of the theoretical underpinnings,  
16 what did you do mechanically then to project the U. K. filings  
17 against Turner & Newall for the future?

18 A. I did precisely the same kind of calculation I did for  
19 the United States. I used the Nicholson epidemiology lagged  
20 by ten years and the numbers of claims filed against Turner &  
21 Newall, I believe, over the last five years to calculate  
22 propensities to sue for each, for the two cancer groups, here  
23 it's lung cancer, other cancers, and mesothelioma, where other  
24 cancer is really lung cancer. I calculated propensities to  
25 sue and then I forecast the future claims by just using those

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1 same propensities to sue multiplying them by the  
2 epidemiological forecasts of cancer deaths in future years in  
3 order to derive estimates of how many people would file claims  
4 in the U. K. against Turner & Newall for mesothelioma and lung  
5 cancer. And for the non-malignant diseases, I again used this  
6 multiple of the number of non-malignant claims to the cancer  
7 claims historically, I used the same non-malignant multiplier.  
8 In the UK I did that, I did that separately for asbestosis and  
9 pleural disease and the results of that are shown on Figure  
10 52.

11 Q. On what number?

12 A. Figure 52. And I did this calculation separately for the  
13 shared liability claims and the Turner & Newall liability  
14 claims and then summed them up in order to get the total  
15 number of claims I forecast. So I assumed that the claim  
16 filing pattern may be different among shared liability and  
17 Turner & Newall only, that's why I did the forecasts  
18 separately.

19 Q. Did you then calculate the indemnity for future claims  
20 and, if so, how did you do that?

21 A. Well, I calculated the values of claims based off the  
22 last five years in the U. K., same values I used for the  
23 pending claims, same percent of claims that would be closed  
24 with payment, and I multiplied the numbers of claims in each  
25 year that I'm forecasting for each disease for the shared

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1 liability and then for the Turner & Newall liability, I  
2 multiplied them by the respective historic averages that I had  
3 used for each disease, for each of these subsets of shared and  
4 Turner & Newall only claims and then multiplied them again  
5 times the percent of claims they can get paid and that  
6 resulted in the amounts that are shown in 53. Again, this is  
7 the same approach that I used in the United States, taking  
8 into account factual differences in the nature of the  
9 litigation thereby disaggregating the claims between the  
10 shared liability and Turner & Newall only.

11 Q. And you made the same assumptions?

12 A. Yes, I did. Well, I did not have an increase in  
13 propensity to sue.

14 Q. You made the same assumptions with respect to when the  
15 claims would settle?

16 A. Yes. I'm sorry.

17 Q. And that what the inflation adjustment would be?

18 A. Yes, those are in the footnote at figure 53.

19 Q. Did you then calculate the present value of both the  
20 pending and future U. K. claims against Turner & Newall?

21 A. Yes, I did. I increased them at an inflation of 2.5  
22 percent. That's a statistic I got from Eurostat, it's an  
23 outfit that collects financial statistical information for  
24 European entities, and they had it at predicted inflation rate  
25 for the U. K. of 2.5 percent, which is the same as the United

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1 States. And I used the same discount rate 5.02 percent  
2 because presumably the earnings that the risk free rate of  
3 returns that Turner & Newall had would be the same in either  
4 country.

5 Q. And did you then come up with a value for pending and  
6 future U. K. claims against Turner & Newall?

7 A. I did it for each of the subgroups and added them  
8 together, which was 229 million pounds as reflected on Figure  
9 54.

10 Q. And again, Dr. Peterson, did you prepare a pie chart to  
11 show how the claims would break up percentage wise against  
12 Turner & Newall by disease?

13 A. Yes. I present that at Slide 55. And it shows that a  
14 relative, somewhat larger fraction of the claims in the U. K.,  
15 the payments would go to mesothelioma claims and smaller,  
16 which I think is like 45 percent in the United States, it's 56  
17 percent for meso in the U. K.. so it's a bit different,  
18 basically similar.

19 Q. Am I correct then to summarize that your Slide 54  
20 represents your forecast of the indemnity that Turner & Newall  
21 will face for present and future United Kingdom claims for  
22 personal injury and death resulting from asbestosis, from  
23 asbestos exposure?

24 A. Yes, present value to the year 2001.

25 Q. Okay. Did you become aware in the course of your

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1 representation of the committee or work for the committee of  
2 criticisms in reports that had been prepared in England by  
3 constituencies there of your work?  
4 A. Well, there were two expert reports prepared by some of  
5 the interest groups in U. K., one by EMB Consulting Group and  
6 another one by Tillinghost, which is actually an American  
7 group, and they commented on my report as of February 2004,  
8 which we discussed yesterday. So it didn't represent my  
9 current forecast, but it was that analysis and representation,  
10 that's all they had available at the time. I had not yet  
11 prepared my report. And they criticized some issues,  
12 commented on others, agreed with the general principles that I  
13 had. Both of them stated they agreed with the expectation --  
14 and they're both from the United States. Actually EMB  
15 discussed the U. K. -- they agreed -- EMB did a forecast for  
16 the United Kingdom that was virtually identical with mine and  
17 they used the same assumptions about the Nicholson  
18 epidemiology lagged ten years.

19 For the United States, both EMB and Tillinghost  
20 recognized and agreed with me that in the future the numbers  
21 of claims that would be filed against Turner & Newall would  
22 increase, the propensities to sue would increase. They agreed  
23 with me that the circumstances in changed litigation would  
24 increase the settlement values against Turner & Newall in the  
25 United States. They then made their own forecasts. And the

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1 forecast by Tillinghost is kind of, they don't provide much  
2 detail about it, they made 27 different forecasts without a  
3 lot of detail about it. But neither Tillinghost nor EMB, they  
4 both had models that were their own representation of the  
5 rates of increase of future claims, so they both incorporated  
6 increasing propensities to sue in their models. For EMB it  
7 was their only model. For Tillinghost it was the model that  
8 they prefer. Neither one increased the dollar values, which  
9 was consistent with the report that I prepared in February  
10 2004, which wasn't really a forecast, it was the calculations  
11 I've described before. And both agreed with my repeated  
12 statements in the February 2004 that the expectations that  
13 values would increase, so they kind of replicated that but  
14 neither one incorporated an increase in dollar values.

15 I then did some recalculations of the EMB forecast,  
16 because there were some technical errors with regard to how  
17 they did their forecast that are described in my supplemental  
18 report. And when I reran their report, it was very similar to  
19 some of my forecasts here, my lower forecasts here that used  
20 similar assumptions that they do, they did. So I've read it.  
21 I've commented on it. They agree in principle with the  
22 dynamics that were going on. The reports don't, aren't  
23 completely consistent with what their expectations are because  
24 they didn't have much of a lead to follow at that point.  
25 Q. Would you look in the book at Exhibit, Plaintiff's

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1 Exhibit 16?

2 A. Yes.

3 Q. Is that the EMB report?

4 A. Yes, it is.

5 Q. Do you know on whose behalf that was prepared?

6 A. It was done for the law firm Denton, Wilde & Papte, and  
7 it was performed on behalf of the administrators of T&N  
8 Limited.

9 MR. INSELCBUCH: We offer that exhibit, your Honor,  
10 not for the truth of what it contains, but just to show that  
11 Dr. Peterson considered it and reacted to the comments in  
12 there.

13 MR. STROCHAK: No objection, your Honor, we think it  
14 should be in evidence.

15 THE COURT: Okay. 16 is in evidence.

16 (PLAINTIFF EXHIBIT P-16 WAS RECEIVED IN EVIDENCE.)

17 BY MR. INSELCBUCH:

18 Q. Now, would you look at Plaintiff's Exhibit 17?

19 A. Yes, I have that.

20 Q. And what's that?

21 A. This is the other report prepared by Tillinghost.

22 Q. Do you know for whom that was prepared?

23 A. Yes, on Page 1 of the report it states that it was  
24 prepared for the law firm of Allen & Overy, who were counsel  
25 to Alexander Forbes Trustee Services Limited and T&N Pensions

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1 Trustee Limited.

2 MR. INSELBUCH: On the same basis, your Honor, we  
3 offer that, not for the truth of what it contains, just to  
4 show that Dr. Peterson did consider it.

5 MR. STROCHAK: No objection, your Honor.

6 THE COURT: P-17 is in evidence.

7 (PLAINTIFF EXHIBIT P-7 WERE RECEIVED EVIDENCE.)

8 BY MR. INSELBUCH:

9 Q. Did you perform any sensitivity analyses with respect to  
10 your estimation of the U.S. and/or U. K. estimations?

11 A. I performed a number of -- close to 20 alternative  
12 forecasts for the U.S. liabilities of Turner & Newall as  
13 sensitivities to test how my forecast would change if I  
14 altered one or sometimes two assumptions to the model. This is  
15 a standard method for trying to understand the uncertainties  
16 in a forecast, it is the best way to do that. And so I  
17 present that -- some of these are plausible alternatives, some  
18 of them I believe are not plausible, but I presented them all  
19 in the reports and provided a table for the Court because  
20 should the Court disagree with my assumptions and find some of  
21 the others more persuasive, you would know what is my estimate  
22 of the liability if you altered one, any of these assumptions.

23 Q. On Slide 56, did you list what some of these alternative  
24 approaches were?

25 A. Yes.

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1 Q. Would you take us through those so that the Court can  
2 understand what the choices were in connection with the  
3 sensitivity analyses?

4 A. Yes. The first is to use -- I've made reference earlier  
5 today to the KPMG's epidemiological projections, which were  
6 essentially derived from Nicholson with some attempt to update  
7 it. I testified earlier that it doesn't -- it isn't -- it's I  
8 believe that it is a reasonable forecast. I've used it on  
9 occasion when the SEER data was ambiguous as to which was  
10 preferable, Nicholson or KPMG. I've used it -- times, several  
11 years ago, preferred it. Now, with the more recent Nicholson,  
12 SEER data, Nicholson is clearly the better model, but it's  
13 reasonable. And so I've done forecasts using the KPMG model  
14 rather than the Nicholson model as a sensitivity. And my  
15 primary report from November 2004 shows the KPMG model and  
16 provides data about it and discusses that.

17 The second is I've used different periods of propensity  
18 to sue. As I testified, I used 2000 and 2001 because it's the  
19 most recent period, which is advantageous. We're forecasting  
20 the future and it's desirable to take the most recent period  
21 of time because that's likely to be more like the future than  
22 more remote periods of time. As a sensitivity, I added 1999  
23 to it, which is a bit more remote. And it's a period -- it  
24 has one more year within the CCR, which is somewhat less  
25 appropriate. It's also a period of lower claiming so it

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1 doesn't fully reflect the recent high level of claims, but I  
2 did include it as an alternative so the Court could see what  
3 effect that would have.

4 Throughout my report and today, I've presented a  
5 primary sensitivity, which is to compare my assumption that  
6 propensity to sue will increase in the future compared to the  
7 models with no increase, I provided details about that  
8 throughout the report. I've made alternative assumptions  
9 about non-malignant multipliers using, adding 2001 to the  
10 period, so that I used both 2000 and 2001 to calculate the  
11 ratio of non-malignant to cancer claims, which produces more  
12 future non-malignant claims because of that spike in filing in  
13 2001. I also did it across three years, 1999, 2000, and 2001.  
14 I used several different alternative estimates of the  
15 settlement values of claims that reflect some of the tables  
16 that we discussed yesterday with different ways in which I  
17 calculated what was the historic -- what was the current value  
18 of Turner & Newall claims based on history. I've included in  
19 there as one assumption, I've examined the use of simply the  
20 amount of money that Turner & Newall used to paid the  
21 settlements in 2000, 2001 without any increase. I think  
22 that's a highly improbable and unreasonable assumption, it's  
23 inconsistent with Mr. Hanly's forecast, but if the Court is  
24 interested in knowing what the forecast would be if I used  
25 those historic values, I provided that.

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1 I've used different assumptions about the percentage of  
2 claims that will be paid in the future. I've based my  
3 calculations of the percentage of claims to be paid on Turner  
4 & Newall's experience in 2000 and 2001. As I expected in  
5 2001, Turner & Newall paid a somewhat smaller percent of  
6 claims because when it left CCR, you would expect that there  
7 were claims that probably CCR would have paid because of the  
8 naming principals and the sharing of liability that Turner &  
9 Newall was named in but now wouldn't pay and that's what I  
10 observed in 2000. So that 2000 and 2001 end up with a lower  
11 percent of payment than if I simply used CCR years.

12 And another step -- this is one of two steps that I use  
13 in my analysis to address the likelihood of somewhat lower  
14 percent of claimants would like paid after 2001 when CCR left.  
15 An alternative is to assume that simply 70 percent of the  
16 claims would be paid for each disease. As I showed yesterday,  
17 90 percent or more, I think it's less, a bit under 90 percent  
18 for mesothelioma are paid over 90 percent for all of the  
19 diseases. I've taken kind of a radical step and said what if  
20 outside of CCR they only paid 70 percent. It's an arbitrary  
21 number that's meant to illustrate what if there was a big  
22 change in the percent of claims paid and I present that. I  
23 think it's implausibly low.

24 Then I have an alternative calculation of the percent  
25 of payments from 1998 through 2001, which is mostly in the CCR

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1 and results in a higher percent of claims being paid. I've  
2 considered whether that's less plausible because I think being  
3 outside of CCR would somewhat reduce the amount of claims to  
4 be paid, but I present that as well.

5 I use alternative discount rates, what happens if I use  
6 5.5 percent as discount rate rather than the 5.02 percent  
7 provided to me by Tersigni and Company.

8 And, finally, I made an assumption about what would  
9 happen if there were national legislation, not of the kind  
10 that's being considered right now, but what's being advocated  
11 by some senators, that would set up medical criteria that one  
12 would need to qualify for payment as a non-malignant claimant.  
13 And essentially such legislation would be intended and it's  
14 being proposed to eliminate the unimpaired claims from  
15 payment. So I ran an analysis of what I believe would be the  
16 impact. And the State of Iowa is actually -- Ohio. Excuse  
17 me. Ohio has actually enacted legislation that's like that.  
18 And so I did a sensitivity analysis to see what would be the  
19 effect on Turner & Newall's liability if such legislation were  
20 to pass. That's a way of kind of dealing with the state --  
21 we're seeing what's called tort reform on a crazy quilt basis  
22 around the country state by state basis. This is analysis,  
23 what if this one particular high visibility tort reform were  
24 to be passed in every state by the Congress.

25 So I examined and present in my report and here the